

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICHARD BURLEY,

Petitioner,

Criminal No. 04-80728

Civil No. 08-14197

vs.

HON. GEORGE CARAM STEEH

UNITED STATES OF AMERICA,

Respondent.

_____ /

ORDER DENYING PETITIONER'S SECOND MOTION FOR
RECONSIDERATION [DOC. # 88] AND DENYING CERTIFICATE OF APPEALABILITY

Petitioner Richard Burley filed a second motion for reconsideration of the Court's order denying motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Petitioner claims that his counsel's failure to object to a two-point enhancement for his criminal history category score was cause for purposes of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984). The Court already considered petitioner's argument, and therefore DENIES petitioner's subsequent motion for reconsideration.

Before petitioner can appeal this court's decision, a certificate of appealability must issue. 28 U.S.C. §2253(c)(1)(B); Fed. R. App. P. 22(b). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). Petitioner has made no such showing. Accordingly,

IT IS HEREBY ORDERED that petitioner's second motion for reconsideration is DENIED.

IT IS HEREBY FURTHER ORDERED that a certificate of appealability is
DENIED.

SO ORDERED

Dated: February 11, 2009

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
February 11, 2009, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk